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1000 West Tower
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/581,261
Filing Date: July 11, 2006
Appellant(s): KORNFALT ET AL.

Thomas P. Pavelko
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/9/2010 appealing from the Office action mailed 4/8/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO/ 03/060256	GRAU	7-2003
US 2005/0115181	GRAU	6-2005

US 6,465,046	HANNSSON et al.	10-2002
US 2004/0170812	SJOBERG	9-2004
US 6,397,547	MARTENSSON	6-2002
WO 02/47906	SJOBERG	6-2002
US 3,811,237	BETTINGER	5-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-2, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Grau (WO 03/060256) with evidence by Grau (US 2005/0115181). Grau ('181) is the English equivalent to Grau ('256). Grau (US 2005/0115181) states on its' face that Grau (US 2005/0115181) is the national stage entry of PCT/FR03/00025 filed 1/7/2003. The international application number for Grau (WO 03/060256) is the same PCT/FR03/00025 with filing date of 1/7/2003. Grau (WO 03/060256) was published on 7/24/2003 which is before the Swedish filing date of 12/11/2003 of Applicant's application.

Grau ('256) teaches a flooring system comprising a plurality of panels *(See FIGs 2-3, 10-11 and 1, module #1 and tile #7.)*

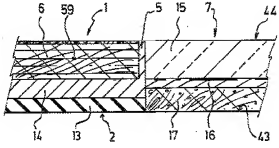


Fig 2

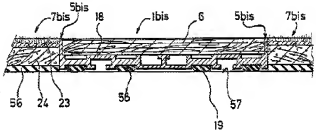


Fig 3

Fig 10

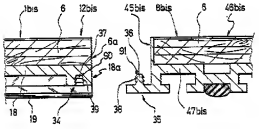
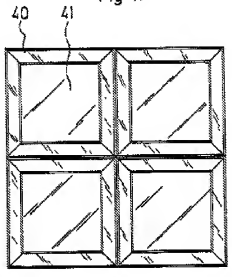


Fig 11

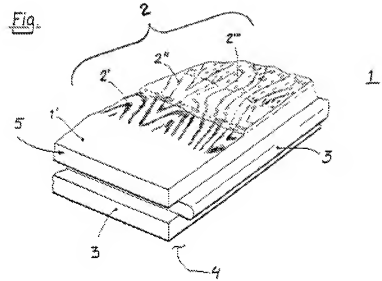


each panel/ (the panels) comprising a carrying panel provided with edges, the edges being provided with a snap-joining functionality, at least one panel differing in at least one of aesthetic or mechanical properties from another panel of the system, the carrying panels further being provided with an upper side and a lower side wherein the flooring system comprises a plurality of panels where each carrying panel is provided with an upper decorative surface on the upper side of the carrying panel with a surface structure and the flooring system comprises panels having at least two of the decorative surfaces being different from each other and independently consisting of a decorative material selected from a mineral, a mineral composite, a thermoplastic composite or a fabric *(See FIGs 2-3, 10-11, 1 and paras. 61-72, 81-84, 8, 44 as illustrated in FIG-2 and the other figures, module #1, with decorative lamina #6, receptacle for receiving lamina #59, lower web #14, square tile #7, glass #15 and decorative sheet #16. Fig-3 illustrates tiles #7bis with carpet #23. The materials can be minerals and/or mineral composites such as the metals aluminum and steel and glass, thermoplastic PVC or carpet. The*

surfaces of the panels are made of different materials. Claim 1 does not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one panel and more than one surface. Two panels will have two physically different surfaces since they are different panels. FIG-10 illustrates the panels being joined by male and female members #35 and #34, respectively having a snap-joining functionality.).

Claims 1, 4-6, 8-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansson et al. (US 6,465,046).

Hansson ('046) teaches a flooring system comprising a plurality of panels, at least one panel differing in aesthetic properties from another panel of the system, with carrying panels having edges *(See FIG-1, col. 6, l. 65 to col. 7, l. 11 and col. 10, ll. 15-28 where a decorative surface element such as a map extends over several panels, thus providing for different aesthetic properties on the different panels since each panel has a different portion of the map.)*,



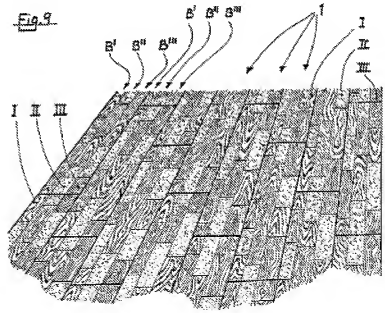
the edges being provided with means for joining *(See FIG-1, entire FIG where the panel has tongues and grooves at the edges for joining the panels.)*, the carrying panel further being provided with an upper side and a lower side wherein the flooring system comprises a plurality of panels *(See FIG-1, panels having upper/lower sides.)* where each carrying panel is provided with an upper decorative surface on the upper side of the carrying panel and that the flooring system comprises panels having at least two of the decorative surfaces being different from each other and independently consisting of a decorative material including a thermosetting composite comprising cellulose and a radiation curing melamine-formaldehyde amino resin with hard particles such as aluminum oxide, silicon oxide and silicon carbide, the particles having an average particles size in the range 50 nm-150 μm *(See FIG-1 and col. 5, ll. 5-10, 39-54, decorative surface #2. Claims 1 and 10 do not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the*

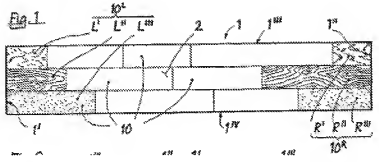
system to have more than one panel and more than one surface. Two panels will clearly have two physically different surfaces since they are different panels.).

Claim Rejections - 35 USC § 102/103

Claims 1, 10, 13 and 16 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sjoberg (US 2004/0170812).

Sjoberg ('812) teaches a flooring system comprising a plurality of panels with surface structures, each carrying panel with edges *(See FIGs 9 and 1 where the panels with edges have different aesthetic appearances due to their surface structures I, II and II. Some of panels as illustrated in FIG-9 have five surface structures on a side while other panels have 4 panels on a side, thus, different appearances.)*,





the carrying panel further being provided with an upper side and a lower side wherein the flooring system comprises a plurality of panels *(See FIGs 9 and 1 plurality of panels with upper and lower sides.)*, where each panel is provided with an upper decorative surface with the appearance of wood and the flooring system comprises panels with at least two of the decorative surfaces being different from each other and independently consisting of a decorative material including a thermosetting composite *(See para. 7 and FIGs 9 and 1. Claims 1 and 10 do not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one panel and more than one surface. Two panels will clearly have two physically different surfaces since they are different panels.)* and inherently teaches edges being provided with means for joining and the surface being glossy *(See FIGs 9 and 1 where the panels are joined by their edges having a means for joining and the surface is glossy.)*.

In the alternative, a person having ordinary skill in the art would obviously appreciate or provide a means for joining the panels and glossy surface. Thus, a rejection under 35 USC 102/103 is proper *(See MPEP 2112.)*.

Claim Rejections - 35 USC § 103

Claims 1-3, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensson (US 6,397,547) in view of Sjoberg (US 2004/0170812).

Regarding claims 1, Martensson ('547) teaches a flooring system comprising a plurality of panels with the carrying panels having edges *(See col. 3, ll. 31-42 and FIG-2, panel #1 with groove #6 and tongue #7.)*, the edges being provided with means for joining *(See FIG-2, groove #10 and snapping web #9 for joining.)*, the carrying panel further being provided with an upper side and a lower side *(See FIG-2, panels #1 and col. 2, ll. 30-63.)* where each panel is provided with an upper decorative surface and the flooring system comprises panels with at least two of the decorative surfaces being a thermoplastic composite or a thermoplastic foil, *(See col. 3, ll. 23-30 and FIG-2, #1.)*,

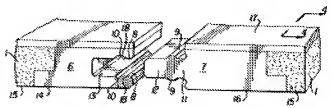


FIG. 2

however, fails to expressly disclose the panels being different and independently consisting of decorative material.

However, Sjoberg ('812) teaches a flooring system comprising a plurality of panels with at least one panel being different *(See FIGs 9 and 1 where the panels with edges have different appearances due to their surface structures I, II and II. Some of panels as illustrated in FIG-9 have five surface structures on a side while other panels have 4 panels on a side, thus, different appearances. Claims 1 and 10 do not require*

each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one panel and more than one surface. Two panels will clearly have two physically different surfaces since they are different panels.) for the purpose of providing panels with the desired décor or pattern *(See para. 3.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide different panels as taught by Sjoberg ('812) in Martensson ('547) in order to provide panels with the desired décor or pattern.

Regarding claim 2, Martensson ('547) teaches where the edges are provided with snap-joining functionality *(See FIG-2, groove #10 and snapping web #9.)*.

Regarding claim 3, Martensson ('547) teaches where the edges are provided with pre-applied glue *(See col. 2, ll. 43-47 and col. 4, ll. 6-11.)*.

Regarding claim 7, Martensson ('547) teaches where the thermoplastic composite comprises thermoplastic materials selected being polyvinyl chloride or polyethylene *(See col. 3, ll. 23-27.)*.

Regarding claim 11, Martensson ('547) teaches where the thermoplastic foil is polyvinyl chloride, polyethylene or polypropylene *(See col. 3, ll. 23-27.)*.

Claims 4-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grau (WO 03/060256) with evidence by Grau (US 2005/0115181) in view of Hansson et al. (US 6,465,046).

Grau ('256) teaches the flooring system discussed above, however, fails to expressly disclose at least two of the decorative surfaces being a thermosetting composite comprising cellulose and a radiation curing melamine-formaldehyde amino resin with hard particles such as aluminum oxide, silicon oxide and silicon carbide, the particles having an average particles size in the range 50 nm-150 μm, thermoplastic materials such as PVC, polyolefins and other polymers, polymeric and metal foils.

However, Hansson ('046) teaches flooring panels where at least two of the decorative surfaces are a thermosetting composite comprising cellulose and a radiation curing melamine-formaldehyde amino resin with hard particles such as aluminum oxide, silicon oxide and silicon carbide, the particles having an average particles size in the range 50 nm-150 μm *(See FIG-1 and col. 5, ll. 5-10, 39-54, decorative surface #2.)* for the purpose of providing a stable, strong, abrasion resistant decorative panel *(See col. 7, ll. 12-15 and Abstract.)*. Furthermore, selecting one of the above polymeric or metal materials for the panel surfaces would have been obvious depending on whether the panels are used outdoors, indoors, subject to heavy traffic, no traffic, consumer preference based on appearance or cost.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide Grau's ('256) mixed flooring having panels with the above materials as taught by Hansson ('046) and the other

polymeric/metal materials in order to provide a stable, strong, abrasion resistant decorative panel.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grau (WO 03/060256) with evidence by Grau (US 2005/0115181) in view of Sjoberg et al. (WO 02/47906).

Grau ('256) teaches the flooring system discussed above, however, fails to expressly disclose panels wherein the elastomeric foil comprises thermoplastic elastomers.

However, as discussed above, Grau ('256) teaches its mixed flooring can be made of various materials based on user preference. Furthermore, Sjoberg's ('906) flooring panels made of elastomeric foil comprise thermoplastic elastomers *(See p. 2, ll. 15-22.)* for the purpose of providing a flooring panel that is resistant to abrasion, chemicals and sound *(See p. 1, ll. 1-7.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide Grau's ('256) flooring system with panels made of thermoplastic elastomers as taught by Sjoberg ('906) in order to provide panels that are resistant to sound, abrasion and chemicals.

The phrase "wherein the elastomeric foil is placed on panels wherein the panels are intended to be walkways while the rest of the floor has a high-gloss wood design of thermosetting composite" in claim 15, lines 9-11 is deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure is

concerned *(see MPEP 2111.02)*. Sjoberg's ('906) panels are clearly cable of being used as such. Since none of the surface is required to be a walkway no foil is required to be placed on the panels. Additionally, since none of the surface is required not to be a walkway then none of the high gloss design is required.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grau (WO 03/060256) with evidence by Grau (US 2005/0115181) in view of Sjoberg et al. (US 2004/0812).

Grau ('256) teaches the flooring system discussed above, however, fails to expressly disclose the panels having a high gloss wood design.

However, Sjoberg ('812) teaches panels having a wood design *(See FIG-9.)* for the purpose of proving a decorative flooring *(See Abstract.)*. Whether or not a glossy surface is provided is a mater of user preference and obvious to select

Therefore, it would have been obvious to provide a Grau's ('256) with decorative wood designs as taught by Sjoberg ('812) in order to provide a decorative flooring.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grau (WO 03/060256) with evidence by Grau (US 2005/0115181).

Grau ('256) teaches the panels discussed above made of carpet, however, fails to expressly disclose the carpet being a needle loom carpet.

However, a person having ordinary skill in the art at the time Applicant's invention was made would know that there are many different types of carpet, with people having

different preferences, which are functionally equivalent to each other including loom carpet. Thus, it is a matter of design choice and personal preference to select one type of carpet over another. Furthermore, Applicant has not set forth any criticality of using one type of carpet over another. Therefore, it would have been obvious to substitute Grau's ('181) generic carpet by needle loom carpet in order to provide a carpet that is aesthetically pleasing to the user.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg (US 2004/0170812) in view of Bettinger (US 3,811,237).

Regarding claim 17, Sjoberg ('812) teaches the system discussed above, however, fails to expressly disclose where the fabric comprises a needle loom carpet.

However, Bettinger ('237) teaches that floor panels made of carpet and other materials such as vinyl are known *(See col. 4, ll. 33-61 and FIGS 4A, 10 and 1, panels #20. Furthermore, a needle loom carpet and Bettinger's ('237) carpet are interpreted as being interchangeable as Applicant has not presented any criticality of using one carpet over another.)* for the purpose of providing a flexible, resilient walking surface for an easily accessible, expandable flooring *(See col. 1, ll. 16-35.)*. Furthermore, it was known at the time Applicant's invention was made that in office environments people have a preference for flooring surfaces that are carpeted in some regions and smooth in the immediate vicinity of the desk chair so as allow for easy movement of a desk chair, especially one that has rollers.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide floor panels with carpet as taught by Bettinger ('237) in Sjoberg ('812) in order to provide a flexible, resilient flooring that can easily be used in combination with other flooring materials.

Regarding claim 18, Sjoberg ('812) teaches a floor comprising a thermosetting composite *(See para. 7 and FIGs 9 and 1.)*, however, fails to expressly disclose said materials being incorporated into the surface of the panels. However, it would it would have been obvious to incorporate said materials into the surface depending on how the flooring it used, whether the use is indoor, outdoor, high traffic, etc.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grau (WO 03/060256) with evidence by Grau (US 2005/0115181) in view of Sjoberg et al. (WO 02/47906).

Grau ('256) teaches the panels discussed above, however, fails to expressly disclose the floor also comprising an elastomeric/thermoplastic foil or thermosetting materials.

However, Sjoberg ('906) teaches flooring comprising an elastomeric foil *(See p. 2, ll. 15-22.)* for the purpose of providing a floor with decreased sound production, especially when people walk on the floor with heels *(See p. 1, ll. 1-2 an 8-13.)*. Furthermore, the above materials are common materials used in flooring and it would have been obvious to use them based on where and how the floor is to be used, such

as outdoors, indoors, heavy traffic areas, or in a way that is aesthetically pleasing to the user.

Therefore, it would have been obvious to a person having ordinary skill in the art to provide a flooring with an elastomeric foil as taught by Sjoberg ('906) and the other common flooring materials in Grau ('256) in order to provide quieter, pleasing floors.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg (US 2004/0170812) in view of Bettinger (US 3,811,237) and Martensson (US 6,397,547).

Sjoberg ('812) and Bettinger ('237) teach the system discussed above, however, fail to expressly disclose where the floor comprises a thermoplastic foil.

However, Martensson ('547) teaches a flooring comprising a thermoplastic foil *(See col. 3, ll. 23-27.)* for the purpose of providing a flooring that does not absorb water *(See col.3, ll. 28-30.)*.

Therefore, it would have been obvious to provide a flooring made of thermoplastic foil as taught by Martensson ('547) in Sjoberg ('812) in order to provide a flooring that does not absorb water.

Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg et al. (WO 02/47906) in view of Sjoberg (US 2004/0170812).

Sjoberg ('906) teaches a flooring system with a plurality of panels comprising a carrying panel with edges *(See p. 1, ll. 16-25 floor laminate with edges.)*, the edges

being provided with means for joining *(See p. 1, ll. 16-25 wherein the panel clearly has edges and all edges can clearly be joined.)*, the carrying panel further being provided with an upper side and a lower side *(See p. 1, ll. 16-25 wherein the plurality of panels have upper/lower sides.)*, where each panel is provided with an upper decorative surface on the upper side of the panel and the flooring system comprises panels having at least two of the decorative surfaces being a thermoplastic composite or a thermoplastic foil and different *(See p. 2, ll. 15-22, where the foil is above the core.)*, however, fails to expressly disclose the surfaces being different independently consisting of a decorative material.

However, Sjoberg ('812) teaches a flooring system comprising a plurality of panels with at least one panel differing from one another *(See FIGs 9 and 1 where the panels with edges have different aesthetic appearances due to their surface structures I, II and II. Some of panels as illustrated in FIG-9 have five surface structures on a side while other panels have 4 panels on a side, thus, different appearances. Claims 1 and 10 do not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one panel and more than one surface. Two panels will clearly have two physically different surfaces since they are different panels.)* for the purpose of providing panels with the desired décor or pattern *(See para. 3.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide different panels as taught by

Sjoberg ('812) in Sjoberg ('906) in order to provide panels with the desired décor or pattern.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg (US 2004/0170812) in view of Bettinger (US 3,811,237) and Sjoberg et al. (WO 02/47906).

Sjoberg ('812) and Bettinger ('237) teach the system discussed above, however, fail to expressly disclose where the floor also comprises an elastomeric foil.

However, Sjoberg ('906) teaches flooring comprising an elastomeric foil *(See p. 2, ll. 15-22.)* for the purpose of providing a floor with decreased sound production, especially when people walk on the floor with heels *(See p. 1, ll. 1-2 an 8-13.)*.

Therefore, it would have been obvious to a person having ordinary skill in the art to provide a flooring with an elastomeric foil as taught by Sjoberg ('906) in Sjoberg ('812) in order to provide quieter floors.

(10) Response to Argument

Appellant argues *(See p. 7, para. 1 of Appellant's Brief filed 2/9/2010.)* that is has not been established that Grau (US 2005/0115181) is the English equivalent of Grau (WO 03/060256).

Appellant's arguments are not persuasive as Grau (US 2005/0115181) clearly states on its' face and in the record that Grau (US 2005/0115181) is the national stage entry of PCT/FR03/00025 filed 1/7/2003 *(See below.)*. The international application number for Grau (WO 03/060256) is the same PCT/FR03/00025 with a filing date of

1/7/2003. Grau (WO 03/060256) was published on 7/24/2003 which is before the Swedish filing date of 12/11/2003 of Applicant's application.

(19) **United States**
(12) **Patent Application Publication** (10) **Pub. No.: US 2005/0115181 A1**
Grau (43) **Pub. Date: Jun. 2, 2005**

(54) **MODULAR FLOORING SYSTEM WITH FRAMED TILES**

(75) Inventor: **Jean-Pierre Grau**, Cosnac (FR)

Correspondence Address:
YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202 (US)

(73) Assignee: **SARL GRAU**, BRIVE (FR)

(21) Appl. No.: **10/500,557**

(22) PCT Filed: **Jan. 7, 2003**

(86) PCT No.: **PCT/FR03/00025**

(30) **Foreign Application Priority Data**

Jan. 9, 2002 (FR) 02/00213

Publication Classification

(51) **Int. Cl.**[7] **E04F 13/08**
(52) **U.S. Cl.** **52/390**

(57) **ABSTRACT**

A flooring system includes tiles (**7**), at least a series of identical and rigid slab framing modules (**1, 8**) in at least one plane, the framing modules of the series being complementary so as to be placed relative to one another to form an exposed grid of the slabs (**7**) and elements for removably assembling together the modules, designed to impose a relative orientation of said modules and link them rigidly in one plane at least and to enable, once the flooring system is installed, to remove any one of the framing modules by manipulating only the framing module and, if required, only the adjacent slab(s) and or modules adjacent thereto.

(43) **Date de la publication internationale**
24 juillet 2003 (24.07.2003)

PCT

(10) **Numéro de publication internationale**
WO 03/060256 A1

(51) **Classification internationale des brevets**[7] : **E04F 15/02**, 15/04

(21) **Numéro de la demande internationale :** PCT/FR03/00025

(22) **Date de dépôt international :** 7 janvier 2003 (07.01.2003)

(72) **Inventeur; et**
(75) **Inventeur/Déposant** *(pour US seulement)* : **GRAU, Jean-Pierre** [FR/FR]; Château de Cosnac, F-19360 Cosnac (FR).

(74) **Mandataire : CABINET BARRE LAFORGUE & ASSOCIES**; 95, rue des Amidonniers, F-31000 Toulouse (FR).

Furthermore, the Office action mailed 4/8/2009 at page 3 cites FIG-2 of Grau (WO 03/060256), see below.

2/6

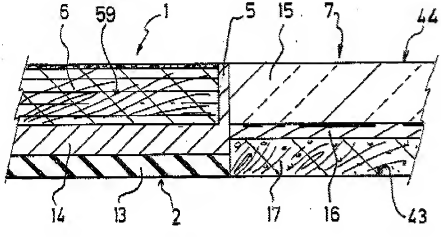


Fig 2

This above FIG-2 for Grau (WO 03/060256) is the same as the FIG-2 of Grau (US 2005/0115181), see below.

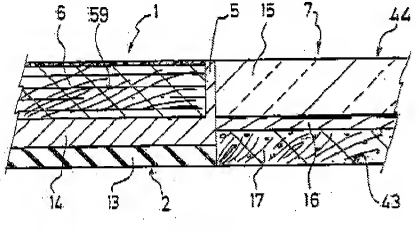


Fig 2

Appellant argues *(See p. 7, para. 2 of Appellant's Brief filed 2/9/2010.)* that Grau (US 2005/0115181) is not a 35 USC 102(e) reference.

It is noted that the Examiner concurs, however, Grau (US 2005/0115181) is not cited as a 102(e) reference for teaching Appellant's claims but rather Grau (WO 03/060256), which Appellant does not dispute as being published prior to Appellant's filing date.

Appellant argues *(See p. 7, para. 3 of Appellant's Brief filed 2/9/2010.)* that since the panels disclosed in Grau (US 2005/0115181) are identical that the surfaces can not be different and independently consisting of decorative material selected from the claimed group.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. The claims do not state that the composition of one panel is different from the composition of another panel. Grau (WO 03/060256) teaches panels that have different composition and panels that are physically different from each other. Grau (WO 03/060256) teaches that the materials can be minerals and/or mineral composites such as the metals aluminum and steel and glass, thermoplastic PVC or carpet *(See FIGs 2-3, 10-11, 1 and paras. 61-72, 81-84, 8, 44.)*. Claim 1 does not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one

panel and more than one surface. Two panels will have two physically different surfaces since they are different panels.

Appellant argues *(See p. 8, paras. 2-3 of Appellant's Brief filed 2/9/2010.)* that Grau does not teach the snap joining functionality per claim 2.

Appellant's arguments are not persuasive as the deformable, compression joining functionality as disclosed in FIG-10 with male and female members #35 and #34 are interpreted as being snap-joining functionality.

Appellant argues *(See p. 8, para. 4 of Appellant's Brief filed 2/9/2010.)* that the "independently consisting of decorative material" means that the materials of the surface of the panels are required to be different.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. As discussed above claim 1 does not state that the composition of the panels are different. All that is required is for the panels to be different which the prior art teaches.

Appellant argues *(See p. 8, para. 5 of Appellant's Brief filed 2/9/2010.)* that Grau does not teach the snap joining functionality per claim 2 because there is no express use of the terms "snap" but rather just deformable.

Appellant's arguments are not persuasive as the compression joining functionality as disclosed in FIG-10 is a snap-joining functionality.

Appellant argues *(See p. 9, para. 2 of Appellant's Brief filed 2/9/2010.)* that since the panels disclosed in Hansson et al. (US 6,465,046) are made of same materials that the surfaces can not be different and independently consisting of decorative material selected from the claimed group.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. The claims do not state that the composition of one panel is different from the composition of another panel. Hansson et al. (US 6,465,046) teaches as can be seen in FIG-1 where a map extends over several panels that are different from each other *(See also col. 6, l. 65 to col. 7, l. 11 and col. 10, ll. 15-28.)*.

Appellant argues *(See p. 10, para. # 3 of Appellant's Brief filed 2/9/2010.)* that the panels disclosed in Sjoberg (US 2004/0170812) can not be different and independently consisting of decorative material selected from the claimed group because the materials are the same. Appellant further argues that there is no teaching of high gloss.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. The claims do not state that the composition of one panel is different from the composition of another panel. Sjoberg (US 2004/0170812) teaches a flooring system where two high glossy panels will clearly have two physically different surfaces since they are different panels *(See para. 7 and FIGs 9*

and 1.). Claims 1 and 10 do not require each panel to only have one decorative surface and not two or more decorative surfaces. The claims do not require the materials of one surface to be different from that of another surface but rather for the system to have more than one panel and more than one surface. Two panels will clearly have two physically different surfaces since they are different panels. The "high gloss design" language is broad without any articulation of when the design is and is not glossy. Sjoberg's (US 2004/0170812) panels are clearly highly glossy.

Appellant argues *(See p. 10, para. # 4 of Appellant's Brief filed 2/9/2010.)* that the panels disclosed by Martensson (US 6,397,547) in view of Sjoberg (US 2004/0170812) do not teach the claimed panels because the panels in each reference are the same.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. This rejection is not a 35 USC 102 rejection but rather a 35 USC 103 rejection. Thus, even if the claims require the compositions of the panels to be different, then this is clearly taught by Sjoberg (US 2004/0170812) which teaches panels having surfaces made of different materials *(See para. 7 and FIGs 9 and 1.).*

Appellant argues *(See p. 11, para. # 5 of Appellant's Brief filed 2/9/2010.)* that the panels disclosed by Grau in view of Hansson do not teach the claimed panels because the panels in Grau are the same and Hansson does to cure the deficiency.

Appellant's arguments are not persuasive as these above arguments are addressed above. Hansson ('046) teaches flooring panels where at least two of the decorative surfaces are a thermosetting composite comprising cellulose and a radiation curing melamine-formaldehyde amino resin with hard particles such as aluminum oxide, silicon oxide and silicon carbide, the particles having an average particles size in the range 50 nm-150 μm *(See FIG-1 and col. 5, ll. 5-10, 39-54, decorative surface #2.)*.

Appellant argues *(See p. 11, para. # 6 of Appellant's Brief filed 2/9/2010.)* that the panels with the claimed foil as taught by Grau in view of Sjoberg et al. (WO 02/47906) are not obvious because the foils are used at different locations.

Appellant's arguments are not persuasive. The Examiner does not suggest the foils are in the same location. Grau teaches its' mixed flooring can be made of various materials based on user preference. Sjoberg's ('906) flooring panels are made of an elastomeric foil that comprise thermoplastic elastomers *(See p. 2, ll. 15-22.)*. The sound dampening properties are effective no matter where they are placed in the structure. Where the foil is placed is not an issue since it is known to apply different materials to the surfaces.

Appellant argues *(See p. 12, para. # 7 of Appellant's Brief filed 2/9/2010.)* that the panels disclosed in Grau and Sjoberg ('812) do not teach high gloss.

Appellant's arguments are not persuasive as the "high gloss" language is broad without any articulation of when the design is and is not glossy. Sjoberg's ('812) panels are clearly highly glossy.

Appellant argues *(See p. 12, para. # 8 of Appellant's Brief filed 2/9/2010.)* that Grau does not teach needle loom carpet.

Appellant's arguments are not persuasive. As discussed above, a person having ordinary skill in the art at the time Applicant's invention was made would know that there are many different types of carpet, with people having different preferences, which are functionally equivalent to each other including loom carpet. Thus, it is a matter of design choice and personal preference to select one type of carpet over another. Applicant does not set forth any criticality of using one type of carpet over another. Therefore, it would have been obvious to substitute Grau's ('181) generic carpet by needle loom carpet in order to provide a carpet that is aesthetically pleasing to the user.

Appellant argues *(See p. 13, para. # 9 of Appellant's Brief filed 2/9/2010.)* that Bettinger ('237) does not teach applying carpet on one panel and another material on another.

Appellant's arguments are not persuasive. Bettinger ('237) teaches that floor panels made of carpet and other materials such as vinyl are known *(See col. 4, ll. 33-61 and FIGS 4A, 10 and 1, panels #20.)*. A needle loom carpet and Bettinger's ('237) carpet are interpreted as being interchangeable as Applicant has not presented any

criticality of using one carpet over another. It was known at the time Appellant's invention was made that in office environments people have a preference for flooring surfaces that are carpeted in some regions and smooth in the immediate vicinity of the desk chair so as to allow for easy movement of a desk chair, especially one that has rollers.

Appellant argues *(See p. 13, para. # 10 of Appellant's Brief filed 2/9/2010.)* that the panels with the claimed foil as taught by Grau in view of Sjoberg et al. (WO 02/47906) are not obvious because the foils are used at different locations.

Appellant's arguments are not persuasive. The Examiner does not suggest the foils are in the same location. Grau teaches its' mixed flooring can be made of various materials based on user preference. Sjoberg's ('906) flooring panels are made of an elastomeric foil comprise thermoplastic elastomers *(See p. 2, ll. 15-22.)*. The sound dampening properties are effective no matter where they are placed in the structure. Where the foil is placed is not an issue since it is known to apply different materials to the surfaces.

Appellant argues *(See p. 13, para. # 11 of Appellant's Brief filed 2/9/2010.)* that the panels with the claimed foil as taught by Sjoberg, Bettinger and Martensson do not teach a foil and another material on a different tile.

Appellant's arguments are not persuasive. As discussed above, Martensson ('547) teaches a flooring comprising a thermoplastic foil for the purpose of providing a flooring that does not absorb water *(See col.3, ll. 23-30.)*.

Appellant argues *(See p. 14, para. # 12 of Appellant's Brief filed 2/9/2010.)* that it would not have been obvious to have panels with different materials as taught by Sjoberg because the claims do not require different patterns.

Appellant's arguments are not persuasive as said arguments are not commensurate in scope with the claims. This rejection is not a 35 USC 102 rejection but rather a 35 USC 103 rejection. Thus, even if the claims require the compositions of the panels to be different, then this is clearly taught by Sjoberg which teaches panels having surfaces made of different materials.

Appellant argues *(See p. 14, para. # 13 of Appellant's Brief filed 2/9/2010.)* that the panels with the claimed foil as taught by Sjoberg and Bettinger do not teach a foil and another material on a different tile.

Appellant's arguments are not persuasive. As discussed above, Sjoberg ('906) teaches flooring comprising an elastomeric foil for the purpose of providing a floor with decreased sound production, especially when people walk on the floor with heels *(See p. 1, ll. 1-2 an 8-22.)*.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Brent T. O'Hern/
Examiner, Art Unit 1794

Conferees:

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/Christopher A. Fiorilla/
Chris Fiorilla
Supervisory Patent Examiner, Art Unit 1700